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ISSN: 2582-6433

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"AN ANALYSIS OF PLEA-BARGAINING MECHANISM": A COMPARATIVE STUDY BETWEEN USA AND INDIA

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ABSTRACT

"After the passage of the Criminal Law Amendment Act of 2005 in 2006, plea bargaining became a part of the criminal justice system. Around 10 years have passed since the very introduction of the notion into the criminal code of India. The intent of this paper is to evaluate the viability of the notion in India by considering the relevant statutes and court rulings. The paper will also take a look at the American approach to plea bargaining, as it was the first of its kind. The paper will also compare the American and Indian approaches of plea bargaining to highlight the advantages and disadvantages of each system. The paper will touch briefly on the aspects of the American model of plea bargaining that have contributed to its unique and successful status. The research can be applied to improving the efficiency and effectiveness of the Indian model of plea bargaining in the court system."

Keywords: Plea Bargaining, compromise, negotiate, criminal

1. INTRODUCTION

The term "plea bargaining" is used to describe the negotiating process that takes place before a trial begins between the accused and the prosecution. In plea bargaining, the accused, and the prosecutor or victim negotiates a deal in which the accused agrees to admit guilt in exchange for a reduced sentence, dismissal of charges, or other benefits. Across the United States, the judicial system has largely embraced and upheld the validity of the practice of plea bargaining. When it comes to plea negotiations, the adage "justice delayed is justice denied" is extremely important.

ISSN: 2582-6433

Plea bargaining is a pre-trial agreement in which the accused offers to plead guilty in exchange for specific concessions from the prosecution. It is a deal in which a defendant pleads guilty to a lower crime and the prosecutors agree to drop more serious charges. It is not available for all types of crimes, for example, someone cannot announce plea bargaining after committing serious crimes or crimes punishable by death or life imprisonment.[1] The courts often accept one of three sorts of plea bargains:

1.1 CHARGE BARGAINING

First, there's "charge bargaining," in which the defendant agrees to plead guilty to a lower charge in exchange for the dismissal of a more serious one. In exchange, all other charges will be dropped. This sort of plea deal is by much the norm rather than the exception.

1.2 SENTENCE BARGAINING

A sort of plea-bargaining in which "the accused admits guilt in exchange for a reduced sentence than what he would have received if the Court had found him guilty of the commission of the offence via the procedure of law."

1.3 FACT BARGAINING

In this sort of plea bargaining, "the parties to the litigation agree to submit a set of facts of the subject before the Court and they jointly do not bring any additional fact to the notice of the Court. In most jurisdictions, this form of plea bargaining is not recognized as legal in the eyes of the courts." The administration of justice is hampered when parties negotiate over facts, which is why this practice is prohibited. When parties engage in fact bargaining, they may withhold critical information from the court, which might lead to a flawed ruling. The Court will have a more difficult time determining what happened and protecting the rights of the innocent when parties negotiate the facts.

[1] Gill Simran, *"Concept of Plea Bargaining under Criminal Procedure Code",* Legal Service India, April 2022, available at https://www.legalserviceindia.com/legal/article-3857-concept-of-plea-bargaining-under-criminal-procedure-code.html (last accessed at 21st May 2023 at 06:18 pm)

ISSN: 2582-6433

2. POSITION PRIOR TO THE ENACTMENT OF THE CRIMINAL LAW (AMENDMENT) ACT OF 2005

As of before the Criminal Law (Amendment) Act of 2005, plea bargaining was not an option for Indian defendants. The Indian judicial system does not recognize the use of plea bargains. Since its inception, plea bargaining has been deemed illegal by Indian courts. As a crime is considered to be a wrong against the state rather than a person, courts in India often did not permit plea bargaining. Sometimes, the accused might avoid punishment altogether by reaching a plea bargain with the state. There would be far-reaching consequences for society's deterrent value and the criminal system if this happened.

The courts in India were certain that plea bargaining was not a part of Indian criminal law. In ***Madanlal Ramchander Daga v. State of Maharashtra***[2] one of the earliest cases in which the Supreme Court of India considered the legality of plea bargaining, the Supreme Court ruled that plea bargaining is illegal under the circumstances. As was also said, the Court must have a trial of the accused and make a decision based on the merits of the case as shown by the evidence presented at trial. If the Court determines that a smaller sentence than the maximum allowed by law is more appropriate, it may impose that sentence on the defendant. Yet the court should not negotiate a plea bargain with the defendant since such deals are not recognized by the law.

In ***Kasambhai v. State of Gujarat,***[3] the Supreme Court held *"the practice of plea bargaining to be against public policy."*

In ***Kachhia Patel Shantilal Koderlal v. State of Gujarat & Anr.***,[4] The Supreme Court of India declared that plea bargaining is a "very repugnant activity" that has no place in Indian law. As the court pointed out at the time, plea bargaining is a process that may only foster greater corruption and possible collusions. In India, if plea bargaining is legalized, it might taint the integrity of the judicial process.

"In its 142nd, 154th, and 177th reports, the Law Commission of India recommended for the implementation of Plea Bargaining. The Law Commission suggested including the new XXIA in the Criminal Procedure Code in its 154th Report. Moreover, the report cited the Law

[2] AIR 1968 SC 1267.
[3] AIR 1980 SC 854.
[4] 1980 Cri LJ. 553.

ISSN: 2582-6433

Commission's 142nd Report, which explained the concept's rationale, its effective operation in the United States, and the process by which it should be given statutory expression in detail. The Report suggested that as a trial measure, the abovementioned concept be applied to offences punished by less than seven years in jail and/or fine, such as those covered under section 320 of the Code. It was also suggested that plea bargaining be allowed to take into account the seriousness of the offence and the punishment that would be imposed. Offenders Inmates with a history of criminal behaviour, those accused of serious socioeconomic crimes, and those accused of crimes against women and children were found to be ineligible for the aforementioned institution. The 177th Report from the Law Commission reaffirms and expands upon the 154th Report's recommendations. In addition, the United States' experience has been cited as proof that plea bargaining may help clear up backlogged cases and speed up the delivery of criminal justice in the Report on the reform of the criminal justice system, 2000, chaired by Justice Malimath."[5]

Until the Criminal Law (Amendment) Act of 2005, which formally authorized plea bargaining in India, the courts here consistently had seen the practice as unconstitutional and improper in the eyes of the law.

3. POSITION AFTER THE ENACTMENT OF THE CRIMINAL LAW (AMENDMENT) ACT OF 2005

The Criminal Law (Amendment) Act, 2005, approved during the winter session of the Indian Parliament, added Sections 265A to 265L to the Criminal Code of Procedure, making up Chapter XXI-A. These sections discussed the structure of the Indian plea-bargaining system. This describes the whole process of plea bargaining in India.

Anybody facing charges that have a potential jail term of seven years may enter into a plea-bargaining process. However, if you have been charged with a socioeconomic crime, a crime against women, or a crime against a child less than 14 years old, you will not be eligible for a plea bargain.[6] As lawmakers didn't specify which crimes qualified as "socioeconomic" for the purposes of plea bargaining, the government was given discretionary authority over the classification of such crimes for the time being.[7]

[5] Neeraj Arora, *Plea Bargaining- A New Development in the Criminal Justice System*, Posted on December 18, 2010, *available at* https://www.legallyindia.com/views/entry/plea-bargaining-a-new-development-in-the-criminal-justice-system-html (last visited on 25th February 2023)

[6] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-A.

[7] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-A.

ISSN: 2582-6433

"On July 11, 2006, the Central Government issued Notification No. S01042 (II)[8] which included a list of socio-economic offences for which the scheme of plea bargaining is not authorized. Plea bargaining is not available to those accused of violating the Scheduled Castes and Scheduled Tribes (Prevention from Atrocities) Act, 1991, the Dowry Prohibition Act, 1961, the Protection of Woman from Domestic Violence Act, 2005, the Infant Milk Substitutes, Feeding Bottles, and Infants Foods (Regulation of Production, supply, and distribution) Act, 1992, etc., as stated in the notification. In the event of a child or juvenile, as specified in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act of 2000, this Chapter pertaining to the plea-bargaining plan shall not apply."[9]

The accused must submit a plea bargain application to the court hearing their case.[10] The application must include a sworn affidavit from the defendant affirming that he is making the request out of his own free choice and not under the influence of anybody else. The Court must notify the prosecution of the application's receipt and verify, during the trial, that the accused is acting willingly in making the application. Section 265-C of the Code outlines the procedure for reaching a plea bargain between the accused and the prosecution.[11] The court must then write a report detailing the outcome of the conference between the prosecutor and the defendant in an effort to achieve a plea bargain.[12]

"When the accused and the prosecutor have met and completed all the necessary procedures under Section 265-D, the court must hear arguments from both sides regarding the appropriate severity of the penalty.[13] Good conduct releases are possible under many laws, including Section 360 of the Code of Criminal Procedure, the Probation of Offenders Act of 1958, and others. The Court can either impose the minimum punishment specified for the offence, which has already been agreed upon by the accused and the public prosecutor, or it can impose a greater sentence. If the minimum punishment for an offence is not specified, the court may impose a sentence equal to one-quarter of the maximum penalty." Therefore, the time spent in custody cannot be counted against the jail term.[14]

[8] Notification of Ministry of Law and Justice, No. S01042 (I), issued on July 11, 2006.
[9] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-L.
[10] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-B.
[11] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-C.
[12] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-D.
[13] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-E.
[14] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-I.

ISSN: 2582-6433

In instances where the plea-bargaining procedure has been used, the ruling of the first court is final. The ruling is final and no further appeals may be filed.[15] But, under Article 226 of the Indian Constitution, an appeal can be filed with the relevant High Court, and under Article 32, an appeal can be filed with the Supreme Court. The Court has the same authority in plea bargaining matters as it has in the trial of other criminal offences, as provided for in the Code of Criminal Procedure.[16] Plea bargaining must adhere to the guidelines laid down in Section 265A through Section 265L of Chapter XXI-A of the Code of Criminal Procedure. No court may depart from the method outlined above. "The court to which the plea bargain application is filed may reject it outright if the accused does not follow the proper procedure."

"Plea bargaining is a process where the accused and the victim work together to find a resolution to the case that is satisfactory to both parties." To what extent the accused is required to compensate the victim or prosecutor is a matter of negotiation between the two parties. The application must be made of the accused's own free choice, without any influence from outside sources. It is important that both the prosecution and the victim join into the plea negotiating process voluntarily and not because of any outside pressure. The victim needs to accept the compromise that the prosecution and the accused have worked out. *"If the prosecutor and the accused cannot reach a plea agreement, the court must issue a report detailing the failure of the process under Section 265-D of the Code of Criminal Procedure between the accused and the prosecutor, and must then proceed with the trial of the accused in a manner consistent with the procedure of law."*

4. JUDICIAL RESPONSE

As was mentioned above, Indian courts have always seen plea bargaining as improper contrary to the constitution until the Criminal Law (Amendment) Act of 2005 legally authorized the practice. As can be shown in the following discussion of a few handful of cases, the Indian court has had a complicated relationship with plea bargaining since its introduction to the country's legal system. In its analysis of plea bargaining, *"the Gujarat High Court noted that the very object of the law is to provide easy, cheap, and expeditious justice by resolution of disputes, including the trial of criminal cases, and that given the current realistic profile of the pendency and delay in the administration of law and justice, fundamental reforms are inevitable. Nothing should be in a*

[15] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-G.
[16] The Criminal Law (Amendment), 2006 (Act 2 of 2006), Sec 265-A.

ISSN: 2582-6433

fixed position. It is, therefore, a sort of remedy, and it will bring something new to the field of judicial reforms."[17]

In ***Pardeep Gupta v. State***,[18] the Court said, "The trial court's rejection of the plea bargain shows that the learned trial court had not bothered to look into the provisions of chapter XXI A of Code of Criminal Procedure meant for the purpose of plea bargaining and rejected the application on the ground that since the applicant is involved in an offence under section 120-B Indian Penal Code and the role of the applicant was not lesser than the other co-accused." The petitioner has been arrested for a number of crimes, but none of them carried a sentence of more than seven years in prison. While deciding whether to grant a plea bargain, it is important to evaluate the circumstances surrounding the accused person, the nature of the crime, etc. The High Court ordered the lower court to reevaluate the defendant's plea bargain in light of the relevant articles of the Code of Criminal Procedure, rather than doing so on a whim.

The low number of reported cases resolved by plea bargaining in the Indian criminal justice system is indicative of the dismal position in which this process currently finds itself, as seen by an examination of pre- and post-amendment decisions. Interesting to note is that prior to the Criminal Law Amendment Act of 2005, judges often rejected plea-bargain cases. Although things have improved somewhat after 2005, this important innovation in the Criminal Law Justice System is still widely neglected despite its narrow field of application and the judicial system's ambivalent attitude towards it.

5. PLEA BARGAINING: A COMPARATIVE STUDY BETWEEN USA AND INDIA

In light of the foregoing, it is clear that the Indian model of plea-bargaining is insufficient to solve the problem of pending cases. Unfortunately, plea bargaining has not yet become a common method of justice administration in India. The Indian model suffers from sections that feel introductory, as though the legislature tried it out first and only then decided to adopt the comprehensive form. However, the legislature in India has taken a cautious approach, and as a result, the notion of plea bargaining has failed miserably in the Indian judicial system. To figure out what's wrong with the Indian model and why it hasn't been able to accomplish its original aims, researchers have compared it to the American model of plea bargaining.

[17] *State of Gujarat v. Natwar Harchanji Thakor*, (2005) 1 GLR 709.
[18] Crl. MA No. 9856/1007 & Bail Appl. 1298/2007.

ISSN: 2582-6433

The Indian model is conceptually distinct from the American one. The use of plea bargaining in Indian courts is quite limited, and the notion has not yet gained widespread public acceptance. Here, we'll list some of the most fundamental differences between the two designs:

I. In India, a plea bargain is possible for offences that carry a maximum sentence of seven years in jail. Under the American system, a person can enter a not-guilty plea for any offence, including murder.

II. Second, in India, this defence cannot be used if the defendant is a woman or a minor less than 14 years old. No such conditions are attached to plea bargaining in the American system.

III. In addition, the Indian model has the restrictions that juveniles, habitual criminals, and those responsible for socioeconomic offences are not eligible to use the plea. In contrast to the Indian model, which does not provide space for such riders, the American model is able to accommodate any and all possible scenarios.

IV. In contrast to the American system, in which the prosecution and the accused jointly submit the application once plea discussions have concluded, the Indian system instructs the accused to do so.

V. In contrast to the American model, where victims have no say over the conditions of plea bargains, it is implied in the provisions of the Indian model that the victim has a power to veto the plea bargain.[19]

The American model of plea bargaining appears to be more comprehensive when being compared to the European one. Yet, the Indian model is not open to everyone; it is designed for a certain population. “Although plea bargaining in India was first implemented to reduce the backlog of pending cases, it has not been successful in doing so after a decade of use. The preceding contrast with the American model may hold the key to understanding the motivations behind this. The inefficiency of the phenomena is shown in the fact that there are so few cases accessible for plea bargaining in a country where three crores of cases are outstanding. Even if there are flaws in the American model of plea bargaining, it is clearly a workable idea given that around 90% of cases in America are resolved through plea bargaining.” The American style of plea bargaining has been more effective than the Indian one at reducing the burden on the judicial system. India is only getting started with plea bargaining, therefore the system there requires a lot of work to reduce case backlogs.

[19] J. E. Ross, “The entrenched position of Plea Bargaining in United States legal practice”, *54 A.M. J COMP. L.717*, 717 (2006).

ISSN: 2582-6433

6. PLEA BARGAINING MECHANISM: A WAY FORWARD

The Indian system of plea bargaining is a topic of debate. One school of thought holds that the Indian criminal justice system would benefit from plea bargaining because it would result in the quicker trial of criminal cases and a smaller backlog of criminal cases in the Indian Courts. The opposing school of thought argues that plea bargaining would have a disproportionately negative effect on the poor, who are often unjustly held by the police and falsely accused of committing crimes.

"As of 2015, government data revealed that plea bargaining was rarely used in India. Plea bargains occurred in just 4,816 of the 10,502,256 cases for trial under the general criminal legislation in 2015.

This dropped to 0.043 percent in 2016, with 4,887 reported cases out of a total of 11,107,472. There was an uptick of 0.27% in 2017, with 31,857 out of 11,524,490 cases settling through plea bargaining. Nevertheless, this was not a lasting trend, since there was a net decline in the number of cases in 2018, with just 20,062 out of 12,106,309 (or 0.16%) being resolved through plea bargaining. It's disappointing that this number hasn't even surpassed 1% after 15 years.

There was still an increase in the number of pending cases, but it was slower than previously. Similarly, there has been an uptick in the number of pre-trial detainees since 2006. As a result, neither of the two goals that plea bargaining was supposed to accomplish was met in India."[20]
It's in their best interest to use the plea negotiating system to cut their sentences and save years of court battles. In addition, some may view the plea-bargaining system as a means by which some criminal acts are made acceptable. An offender might utilize the idea to get out of paying for their crime by negotiating with the prosecution to spend as little time in jail as possible and pay as little as possible in restitution to the victim (if required). A defendant can employ plea bargaining as many times as they choose. This plea-bargaining system provides an opportunity for repeat criminals to legitimize their behaviour. Thus, it's important to set limits on how often an accused

[20] Vishwanath, A. (2016) *Why Hasn't Plea Bargaining Taken off in India?* MINT. available at https://www.livemint.com/Politics/otm5XvV7DTZJ9KaKScbJ4H/Why-hasnt-plea-bargaining-taken-off-in-India.html (last visited on 23 February 2023).

ISSN: 2582-6433

person can employ plea bargaining as a defence strategy. The Court has an obligation to prevent repeat criminals from abusing the plea-bargaining system, as doing so would undermine the rule of law.

To promote a timely criminal justice system in India, the concept of plea bargaining aims to minimize the backlog of criminal cases. However, if an accused is charged with a crime for which the maximum sentence is more than seven years, he or she will not be able to employ the plea-bargaining process. Offenders who target women and children under the age of 14 are not eligible for plea negotiation, and neither are those committing socio-economic crimes. Those accused with multiple crimes will not be able to benefit from plea bargaining because of the exclusion of certain offences. As such, *"it is important to consider the suggestion made in the 142nd Law Commission Report, which stated that the scheme of plea bargaining may be introduced initially only for those offences in which the maximum punishment is of seven years in imprisonment, and that once the viability and success of the scheme are seen, the purview of the scheme of plea bargaining could be widened to include other crimes as well. As the effectiveness of the plea-bargaining scheme has been seen up to this point, the legislature should seriously consider expanding the scheme to include offences with a sentence of more than seven years in order to realize the true goal of introducing the scheme into Indian jurisprudence."*
The fact that there is no set deadline for the whole plea negotiating process also works against the scheme's original intent. Once the accused submits a plea bargain application, there is no stipulated time limit within which the prosecution and the accused must reach an agreement. There is also no time limit within which the Court must report on whether or not the accused and the prosecutor or the victim were able to reach a mutually acceptable resolution for expedited case disposition. The goal of a swift criminal justice system is rendered moot under these circumstances since the Court has the authority to take its own time in preparing the report.

An innocent individual can decide that it is in his best interest to plea bargain for guilt in a case that could drag on in court for years in a nation like India. An innocent person may choose to do this if he knows that he will be found guilty after a lengthy trial that would drain his finances. Plea bargaining thus potentially violates the tenet of the law that no innocent should ever be punished. The 142nd Law Commission Report identified the promotion of corrupt behaviour as one of the key disadvantages of plea bargaining. On the surface, it would appear that India's plea-bargaining process is designed to prevent any sort of corruption.

ISSN: 2582-6433

Yet, the content of the discussion between the accused and the prosecution or the victim following the accused's plea negotiating motion to the Court is seldom if ever reported.

Even if the accused has made the plea bargain application on his or her own will, the opposite side may still try to financially bargain with him or her to extend the length of the case. Yet, the accused may also bribe the public prosecutor into negotiating terms that are more favourable to the accused than to the victim or the State. To get around this disadvantage of plea bargaining, the judge should preside over the initial meeting between the defendant and the prosecutor or victim. Of course, this means the judge hearing the case or accepting the plea bargain must be impartial to both the accused and the prosecution.

In 2006, "the Central Government established a list of socioeconomic offences for which the plea-bargaining plan is unavailable. The Dowry Prohibition Act from 1961, the Protection of Women from Domestic Violence Act from 2005, the Scheduled Castes and Scheduled Tribes (Prevention from Atrocities) Act from 1991, and the Infant Milk Substitutes, Feeding Bottles, and Infants Foods (Regulation of Production, Supply, and Distribution) Act from 1992 are all examples of such social and economic offences." It's important to keep in mind that not all lawsuits filed under these laws are the same. It's possible that some of the crimes are so severe that they damage the entire community, while others are so little that they hardly phased out the victim. It would be more practical to decide on instances involving violations of the aforementioned Acts after carefully weighing the circumstances and consequences of the offence, rather than making the plea-bargaining process unavailable for such violations. The system of plea bargaining should be available to the accused even if the crime is minor in character or is classified as a socioeconomic crime.

7. CONCLUSION AND SUGGESTIONS

To alleviate the backlog of criminal cases, "India implemented a plea-bargaining mechanism. The Indian criminal justice system was the target of the reforms. The concept of legalizing plea bargaining in India was formerly decided by the courts and labelled a repressible activity. The Law Commission Reports, however, advocated for the implementation of plea bargaining in India to speed up the country's painfully sluggish criminal justice system. Since the Criminal Law (Amendment) Act of 2005 established a plea-bargaining scheme in Chapter XXI-A, Sections 265-

ISSN: 2582-6433

A to 265-L, the opinion of the Courts regarding plea bargaining has shifted dramatically. With more criminals opting to negotiate their sentences through plea bargaining with the prosecution and victim, the criminal justice system in India has improved in terms of efficiency. However, the current plea-bargaining procedure in India has a few drawbacks, including that it can encourage a lot of corruption in the justice system and that the accused cannot use the scheme of plea bargaining if they have been charged with a crime with a maximum sentence of more than seven years or a crime with a significant impact on society's economy."

When it comes to criminal proceedings, time is of the essence, thus the Court and the parties involved in the case have no deadline within which they must finish the plea negotiating procedure. Although the plea-bargaining mechanism has already been demonstrated to be an effective and long-lasting tool of justice, there is an urgent need to address the flaws in the current system in order to make it fairer and more effective. It would be a significant step forward in improving India's criminal justice system if the problems plaguing the current plea-bargaining method could be discovered and resolved.

Examining the practice of plea bargaining in India in detail reveals both the strengths and weaknesses of the aforementioned methodology. Unlike in the United States, where the function of the court is only passive, under the Indian model, the role of the judiciary is active, which has several benefits. In opposed to the United States, where victims have little say over the conditions of plea bargains, in the Indian model of plea bargaining, victims have the right to veto the bargain. The American form of plea bargaining, the world's pioneer and most successful, has many advantages, while the Indian approach has several disadvantages. As a result of its flaws, the Indian model has failed to produce the anticipated outcome. With any luck, this piece may provide some food for thought for India's legal elite, who can then use it to work towards improving plea bargains and reducing the country's astronomical backlog of pending cases.

The argument is not that the American model should be adopted wholesale, but rather that the Indian model should be supplemented with the required elements to make it successful enough to solve the current clogging of the Courts' data. Even though the idea has been around for a decade in India, it hasn't accomplished anything particularly remarkable thus far. Fewer cases involving plea bargaining and judicial sentiment towards the practice both point to a bleak outlook for the process. Bringing plea bargaining up to par with the West requires two changes. Legal reforms are first and foremost necessary to bring India up to speed with other nations that have found

ISSN: 2582-6433

success in this area.

The court and the juristic class have a responsibility to support the legislation concerning plea bargaining, as without their support, this type of law is unlikely to obtain widespread acceptance as a common remedy. It is important to take plea bargaining law seriously and put it into practice often. With proper consideration, plea bargaining may be a viable solution to the terrible backlog of cases in the judicial system.